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No. 82-195

IN THE

Supreme Court of the United States

VAN D. MUELLER AND JUNE NOYES,
Petitioners,

VS.

CLYDE E. ALLEN, JR., DENNIS J. BERTHIAUME, KAREN F. BERTHIAUME, THOMAS W. DZIK, MARY J. DZIK, EDWARD F. FUJAN, JOLEEN A. FUJAN, BRENDA B. BECKER, RICHARD C. HOLLINGSWORTH, MARJORIE HOLLINGSWORTH, ROGER DEHAAN AND DOROTHY DEHAAN,
Respondents.

On Writ of Certiorari to the United States Court of Appeal For the Eighth Circuit

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE AND BRIEF OF PARENTS RIGHTS, INC., IN SUPPORT OF RESPONDENTS

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MOTION OF PARENTS RIGHTS, INC., FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

Parents Rights respectfully moves for leave to file a Brief as *Amicus Curiae* in support of Respondents.

Parents Rights is an organization consisting of over 20,000 parents and other individuals residing in all fifty states who seek to support freedom of choice and parental rights in education. The group's stated purposes are "to secure legal recognition for the right of parents to direct and control the education of their children; to secure true freedom of choice for parents in the education of their children; to undertake and support court action to achieve their goals; to publish literature and other materials to awaken the public to the denial of the human rights of the family in education."

The members of Parents Rights have a special interest in the litigation before this Court because as parents of children attending nonpublic schools and as advocates of governmental recognition of parental rights in education, their interests and concerns would be adversely affected by a ruling voiding the Minnesota statute. Such a ruling would discourage and prevent other states and Congress from allowing similar tax deductions for educational expenses. This brief will discuss the statute's purpose of using tax deductions to aid parents in exercising their right to direct and control their children's education.

All litigants have denied consent to file *Amicus Curiae* briefs.

Respectfully submitted,

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Attorney for Parents Rights, Inc.
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BRIEF OF PARENTS RIGHTS, INC., IN SUPPORT OF RESPONDENTS

INTEREST OF AMICUS CURIAE

The members of Parents Rights have a special interest in the litigation before this Court because as parents and advocates of governmental recognition of parental rights in education, their interests and concerns would be adversely affected by a ruling voiding the Minnesota statute. Such a ruling would deprive Minnesota parents of helpful tax deductions and would discourage other states and Congress from allowing similar tax deductions for educational expenses of parents.

PREFACE

We are deeply indebted to the following persons for the time and effort they have contributed in compiling this brief: Peter W. Salsich, Jr., Associate Dean, St. Louis University School of Law; Dr. Daniel D. McGarry, Ph.D., Professor of Emeritus, St. Louis University; and Michael Kasperek and Shawn Elizabeth Carroll, students, St. Louis University School of Law.

SUMMARY OF ARGUMENT

The effect of the Minnesota Statutes (Minn. Stat. § 290.09 (22)) is to provide a negative form of help for all parents who incur certain additional expenses in the basic education of their children, in cases where these expenses are not already tax deductible. By so doing, the State of Minnesota helps parents to fulfill a legal and natural obligation and exercise a right under the Constitution with a somewhat lessened tax burden. In so doing, the State of Minnesota also applies and extends general income tax principles and practices which allow numerous deductions for expenses from gross income in calculating net income for tax purposes, so that parents participate as members of a broad class allowed such deductions. Among such allowable tax deductions in calculating taxable income are numerous deductions for other educational expenses, as well as deductions for necessary expenditures which reduce effective income and thus lessen ability to pay taxes, and deductions for personal expenditures which contribute to the public welfare. All of these three qualifications are present in the case of deductions of parental expenditures for the elementary and secondary education of their children. Nullification of the Minnesota statute would be unreasonable and inconsistent with general income tax principles and practices and would not conform to previous decisions of this Court. Such nullification would also overlook and negate various parental and personal rights of parents under the Constitution. Allowing the statute to stand would uphold the decision of three previous federal courts as well as the will of the State of Minnesota expressed through its elected representatives. It would also uphold reasonable negative accommodation of and benevolent neutrality towards personal values of citizens previously allowed by this Court.

ARGUMENT

I. THE EFFECT OF THE MINNESOTA STATUTE (MINN. STAT. § 290.09 (22)) IS TO HELP PARENTS FULFIL THEIR OBLIGATIONS AND EXERCISE THEIR RIGHTS CONCERNING THE EDUCATION OF THEIR CHILDREN.

A. Parents Have Both A Legal And A Natural Obligation To Provide For The Education Of Their Children.

Parents are required both by law and by nature to provide for the education of their children. All parents are required by the State of Minnesota, as well as by other States in the Union, to see to the education of their children. The compulsory education statutes of the State of Minnesota require that parents send their children to a public or private school for the greater part of each year from the age of seven to that of sixteen. Minn. Stat. § 120.10(1) and Minn. Stat. § 120.12(1-3).

Besides being required to do so by law, all parents also have a natural obligation to provide for the education of their children. This Court defined this natural obligation in the *Meyer* case when it said: "Corresponding to the right of control, it is the natural duty of the parent to give his children education suitable to his station in life." *Meyer* v. *Nebraska,* 262 U.S. 390 (1923) at 400. This Court also referred to this natural duty in the *Pierce* case when it declared: "The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Pierce* v. *Society of Sisters,* 268 U.S. 510 (1925) at 535.

B. Parents Have A Right To Select And Direct The Education Of Their Children.

As this Court has several times noted, all parents likewise have a right to select and direct the education of their children. In the *Meyer* case, this Court said that a State could not attempt to assume exclusive control of education without "doing

violence to the letter and spirit of the Constitution." *Meyer* v. *Nebraska,* 262 U.S. 390 (1923) at 402. The "natural duty of the parent to give education to his children" spoken of by the Court in this same (*Meyer*) case necessarily presumes a right, as is evident from the Court's decision upholding the parentally desired teaching of the German language in private schools. *Meyer,* 262 U.S. 390 (1923). This educational right of parents was clearly enunciated by this court in the *Pierce* case, wherein the Court spoke of "the right coupled with the high duty" of parents to educate their children. *Pierce* v. *Society of Sisters,* 268 U.S. 510 (1925) at 535. This right was likewise referred to by this Court in *Everson* v. *Board of Education,* 330 U.S. 1(1947) at 18. The same right was reaffirmed by this Court in the *Griswold* case: "By *Pierce* v. *Society of Sisters, supra,* the right to educate one's children as one chooses is made applicable to the States by the force of the First and Fourteenth Amendments." *Griswold* v. *Connecticut,* 381 U.S. 479 (1965) at 482. The same principle concerning the educational rights of parents was affirmed in *Minersville* v. *Gobitis,* 310 U.S. 586 (1940) at 599. The importance of the primary education right of parents was likewise insisted on by this Court in the *Prince* case: "It is cardinal with us that the custody, care and nurture of the child reside first in the parents...." *Prince* v. *Massachusetts,* 321 U.S. 158 (1944) at 166. The principle that parents possess the primary right in education was also an essential element in this Court's decision in the *Yoder* case, wherein the Court's opinion noted that "The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." *Wisconsin* v. *Yoder,* 406 U.S. 205 (1972) at 232. This widely recognized right is also guaranteed by the United Nations Declaration of Human Rights to which the United States is a signatory. Article 26 Section 3 of this Declaration says: Parents have a prior right to choose the kind of

education that shall be given to their children." UNITED NATIONS, UNIVERSAL DECLARATION OF HUMAN RIGHTS, § 26 sec. 3 (Reprint, 1981).

C. The Fulfilment And Exercise Of Parental Obligations And Rights Concerning The Education Of Their Children Involve Considerable Expenses.

Parents in Minnesota and other States currently fulfil their educational obligations and exercise their right of choice regarding the education of their children at considerable expense. This is true of parents who send their children to public schools as well as of parents who send their children to parental or private schools. Some parents choose to fulfil their educational obligation through public schools which are mainly free of charge, while other parents prefer to send their children to non-governmental schools for their education. Parents who choose to send their children to public schools fulfil their natural and legal obligation as well as exercise their right to educate their children by supporting tax levies for educational purposes, by voting for candidates who endorse the latter, by paying educational taxes, by seeking that their children attend school, and by fostering their children's education and success in school in various ways, including assumption of additional expenses for special instruction, equipment, and supplies. Parents who prefer to send their children to non-governmental schools for various reasons both contribute their share of the cost of educating their neighbors' children by paying similar educational taxes and in addition pay the tuition and other charges of education in parental schools which they consider best for their children. Both groups of parents bear additional expenses for special instruction, equipment, and supplies.

Educational costs as well as other costs of child support and rearing have multiplied several times in recent years. Thus in 1960 the average per-pupil cost for public, elementary and secondary education in the United States was $472.

NATIONAL CENTER FOR EDUCATION STATISTICS, DIGEST OF EDUCATON STATISTICS (1982) 80. By 1980 this had multiplied over 5 times and had risen to $2494. NATIONAL CENTER FOR EDUCATION STATISTICS, DIGEST OF EDUCATION STATISTICS (1982) 80. Meanwhile general costs multiplied about 2.8 times. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES (1981) 458-460.

During the period from 1950 to 1980 the proportional value of income tax deductions for dependents greatly diminished. In 1950 the median family income was $3319 and the allowable personal exemption was $600 per person, or $2400 for a family of four. This amounted to 72% of the current median family income. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES (1981) 436. I.R.C. § 4071 (1952). In 1979, the median family income was $19,661, or almost six times as much. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES (1981) 436. But the personal exemption had only risen by about 66% to $1,000 or $4,000 for a family of four, which amounted to only about 20% of the family income. I.R.C. § 151. Thus the personal deductions had lost four fifths of their proportionate value, despite their increase to $1,000.

D. **The Minnesota Statute Lightens The Tax Burden Of All Parents With Educational Expenses In Rearing And Educating Their Children.**

Partly to ease the parental tax burden and the disproportionate rise in the expenses of rearing and educating their children and the inadequate increase in personal deductions allowable in calculating income taxes, the Minnesota Statute allows comparatively small deductions for educational expenses borne by parents. The Statute thus enables parents to bear the heavy expenses associated with rearing and educating children. In doing so it allows tax deductions proportionate to the actual

educational expenses of parents. If the amount of forgiveness is somewhat higher in the case of some parents, it is because they have larger educational expenses. Many of the educational expenses of parents are already deductible, being paid through taxes which are tax deductible.

II. THE MINNESOTA STATUTE ALLOWING EDUCATIONAL TAX DEDUCTIONS APPLIES AND EXTENDS GENERAL INCOME TAX PRINCIPLES AND PRACTICES SO THAT PARENTS PARTICIPATE AS MEMBERS OF A VERY BROAD CLASS.

Both federal and state income tax laws allow numerous deductions for educational expenditures, for expenses that reduce effective available income and lessen ability to pay taxes, and for personal expenditures that contribute to the public welfare. The Minnesota statute for educational tax deductions is a reasonable extension of such income tax principles and practices, which take into consideration both ability to pay and the public welfare.

A. The Minnesota Statute Applies And Extends General Income Tax Principles And Practices That Allow Numerous Deductions For Educational Expenses

Numerous deductions for educational expenses are already allowed by state and federal income tax laws. See below. The Minnesota Statute applies and extends the general income tax principles and practices involved in the allowance of deductions for educational expenses. These deductions are explained by reduced effective income with lessened ability to pay on the one hand, and the contributions that education makes to the general welfare on the other hand.

Both state and federal income tax laws allow numerous deductions for educational expenses. Among the latter are educational expenses incurred after one has completed one's regular education and engaged in income-producing work. Thus

income tax deductions are allowed for educational expenses incurred in order to enhance one's work skills or one's professional competence. I.R.C. § 1.162.5 (a)(1); Minn. Stat. § 290.09. Income tax deductions are also allowed for the expenses of further education required by one's employer. I.R.C. § 1.162.5, (a)(2); Minn. Stat. § 290.08

The federal tax system also allows employers to deduct money for educational assistance paid to an employee for the latter's further education. I.R.C. § 127. Deductions are also allowed by both federal and state income tax laws for expenses involved in providing day care and education for pre-school children when a single parent or both parents work. In this case the increased cost of the day care caused by the addition of simultaneous education is allowed as a deduction. I.R.C. § 44A. As has been noted, taxes paid for public education are deductible. Such taxes are levied upon the public at large on the principle that education of children is a public benefit, a proposition that also applies to private education. I.R.C. § 164.

B. The Minnesota Statute Applies And Extends The General Income Tax Principle And Practice That Allows Deductions For Many Expenses That Diminish Effective Income And Lessen Ability To Pay Taxes.

Numerous tax deductions are allowed by both federal and state laws for personal expenditures that reduce effective personal income and diminish ability to pay taxes. Among such are: tax deductions for medical and dental expenses, I.R.C. § 213; Minn. Stat. § 290.09 (10); tax deductions for casualty and theft losses, I.R.C. § 165, Minn. Stat. § 290.09 (5); tax deductions for alimony paid to an ex-spouse, I.R.C. § 215, Minn. Stat. § 290.09 (14); tax deductions for interest on loans or credit, I.R.C. § 163, Minn. Stat. § 290.09 (3); tax deductions for the support of dependents, including children even when the latter are reared in a particular religion, I.R.C. § 151; tax deduc-

tions for child care expenses of working parents. I.R.C. § 44A, and tax deductions for numerous expenses incurred in gaining income. I.R.C. § 1402. Minn. Stat. § 290.09 (2).

The reduced effective income and lessened ability to pay taxes on the part of parents with additional educational expenses are induced by circumstances beyond their control. Included among these circumstances are state compulsory education laws, the lack of participation in public financing, and the absence of certain subjects and accessories in public education.

C. The Minnesota Statute Applies And Exends General Income Tax Principles And Practices Whereby Numerous Personal Expenditures That Contribute To The Public Welfare Are Tax Deductible

1. Numerous Tax Deductions Are Allowed For Personal Expenditures That Contribute To The Public Welfare According To General Income Tax Principles And Practices

Numerous tax deductions are allowed by both state and federal laws for personal expenditures that contribute to the public welfare, in accordance with general income tax principles and practices. Among such allowable deductions are deductions for educational expenditures previously mentioned, as well as deductions for educational taxes that support public education. Tax credits are allowed for various energy-saving expenditures in order to conserve precious energy for the public good (present and future) I.R.C. § 44C. That educational expenditures of parents contribute to the public good is as true of private education as it is of public education, and as true of additional educational expenditures as it is of educational taxes. It is universally accepted that the education of children contributes to the public good, especially in a democracy. Tax deductions for child support involve recognition that today's children are tomorrow's

workers, defenders of the state, taxpayers, voters, public officials and custodians of learning. Numerous diverse additional expenditures are made tax deductible for like reasons, including expenditures by farmers for clearing lands.

Sixty or fifty percent of long term capital gains are tax deductible, on the apparent principle that capital investments help the economy and thus promote the public welfare. I.R.C. § 1202, Minn. Stat. § 390.16(4). The federal deductibility is sixty percent and the Minnesota deductibility if fifty percent. A like principle is apparently involved in the partial deductibility of dividends that has been allowed by the federal government. I.R.C. § 116A. Political expenditures of candidates for public office and contributions to the latter are likewise tax deductible apparently on the principle that broad political participation is good for the country. I.R.C. § 41, Minn. Stat. § 290.09(2). Contributions to religious, charitable, scientific, and literary organizations, even to those of which one is a member and from which one derives benefits, are likewise tax deductible. I.R.C. § 170.

2. Educational Expenditures By Parents Contribute To The Public Welfare

Educational expenditures by parents contribute to the public welfare in several ways. These expenditures provide basic education, enhance the contents of education, provide special education as needed or deemed desirable, save considerable money for the state and taxpayers, involve parents more intimately in education, and preserve the many benefits of private education, while they also constitute an exercise as well as a safeguard of personal freedoms.

a) Educational expenditures by parents provide the benefits of *basic education* for children. That basic education is essential for the citizens of a democracy, and that it contributes to the public welfare is universally recognized. For this reason the education of children is mandated by all states in the union, and

various taxes for the liberal support of free public schools are levied on the public. In the case of parents of public school children, these educational expenditures for basic education are made by paying taxes that support public schools. In the case of parents who send their children to non-governmental parental schools, these expenditures are made by paying the tuition and additional expenses involved, as well as by paying the taxes that support public schools. The addition of instruction concerning religion and religion-based morality to the basic secular education provided in private schools does not cancel, and in fact may even increase the contribution to the public welfare made by these schools.

b) Educational expenditures by parents also augment basic education by *additional education*. In general, with certain limitations, the fuller the education of children, the greater the benefit not only for the children but also for society. Additional expenditures for education made by public school parents enhance their children's education as is exemplified by expenditures for physical education accessories, equipment for musical and dramatic activities, driver-education, special tutoring, and summer school attendance. All of these additional expenditures enhance the content and efficacy of the education of children. Similarly parental expenditures for attendance of children at schools that include such features such as more attention to basics and more discipline, as well as religious instruction and religion-based morality, may also enhance the education of such children and contribute to the public good.

c) Additional educational expenditures by parents often provide *special types of education* beneficial to certain children and thus to society, when such education is not available from the public schools. For some children a boarding school is best when home conditions are not conducive to proper upbringing or when the child needs a fresh start and special direction. In some cases such education is necessary, as when both parents or a single parent are away from home a great deal of the time. For certain children the Montessori method or some other special

method of education may be better. For some children a vocational type of education that may not be available in the public schools may be best. Some parents feel that religion is the most important thing in life and that it should be included in the daily curriculum along side secular subjects. For parents who assume the heavy costs of special education and do not utilize the public schools they support, educational tax deductions are both helpful and reasonable.

d) An important and very tangible benefit to the public from additional parental educational expenditures made by both public and private school parents is the enormous *savings* they effect for taxpayers at large and for the state. In some cases parental expenditures provide for supplemental equipment, supplies, and education that might otherwise have to be taken over by the state. Examples include purchase of gym shoes, rental of musical instruments, and driver education. In other cases parents assume the entire cost of education. The estimated annual average per-pupil cost of public education in the United States in 1982-1983 is about $3,000. NATIONAL CENTER FOR EDUCATION STATISTICS, DIGEST OF EDUCATION STATISTICS (1982) 81, 82, 47; and NATIONAL CENTER FOR EDUCATION STATISTICS, PROJECTION OF EDUCATION STATISTICS TO 1986-87 (1978) 14, 15, 90, 91. It is thus estimated that in general each child who does not attend a public school saves taxpayers about $2500. Since there are about five and a half million children in non-governmental parental schools today, this saves taxpayers and the state some $13,750 million or $13.75 billion a year. *Id.* This saving of $2500 per child per year, provided by parents who also support the public schools, deserves some recognition. In Minnesota it has been recognized by the legislature, by the governor, and by the courts. Because of this expenditure and saving, Chief Justice Burger, joined by Justices White and Rehnquist, would have even allowed direct money grants to parents of children in parental schools on the basis that "...a State should be permitted to reimburse parents of private school children — partially

at least — to take into account the State's enormous savings in not having to provide schools for these children.... It is no more than simple justice to grant partial relief to parents who support the schools they do not use." Dissenting Opinion in *Committee For Public Education* v. *Nyquist,* 413 U.S. 756 at 802-803 (1973) If this can be said of direct money grants to a limited class of parents, what should be said of indirect negative relief to members of a broad class?

e) The *greater parental involvement* in the education of their children brought about by additional educational expenditures contributes to the effectiveness of both public and private school education and thus promotes the public interest. Studies seeking to explain the remarkable success of private schools in educating minority children in inner cities attribute this partly to the greater involvement of their parents in the educational enterprise. See CIBULKA ET AL, INNER CITY PRIVATE ELEMENTARY SCHOOLS (1982); COLEMAN, ET AL, PUBLIC SCHOOLS AND PRIVATE SCHOOLS: A REPORT (1981). The recognition of the value of parental involvement in the education of children was noted by this Court in the *Yoder* case when it said: "the values of parental direction of the ...upbringing and education of their children in their early and formative years have a high place in our society." *Wisconsin* v. *Yoder,* 406 U.S. 205 (1972) at 213.

f) Educational expenditures of parents also contribute to the survival of *private education* and the benefits it confers. Private education, whose existence is one of the marks of free democratic states as opposed to totalitarian states, helps both our country in general and education in particular in many ways, yet its substantial survival is far from insured. Proportionate enrollments in private schools as compared to public schools have declined regularly, despite brief intermissions, since the introduction of free public education in this country in the mid-nineteenth century. When free public education was introduced, the great majority of children were in private schools;

at present only about 11% of our country's children attend private schools. See NATIONAL CENTER FOR EDUCATION STATISTICS, DIGEST OF EDUCATION STATISTICS (1982) 7. In the eleven year period from 1965 to 1976, attendance at private schools dropped 24%, falling from about 6,304,800 to 4,804,000 students, with inflation and high taxes the probably principle reasons. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES (1980) 138-140. A resumption and continuation of this decline would probably result in a practical elimination of private education in the United States, except for the very affluent and a few others.

1) Private education *helps to ensure the health and progress of public education.* Private education provides a means of comparison, stimulating example, and a modest measure of competition for public education. The recent effects of the Coleman report concerning the excellent results of private education illustrate this point. See JAMES S. COLEMAN ET AL, PUBLIC SCHOOLS AND PRIVATE SCHOOLS: A REPORT (Chicago, National Opinion Research Center, 1981) and various newspaper and periodical articles and editorials on the subject since its publication.

2) Private education preserves *private enterprise and continuing improvements* in education. It prevents the imposition of a stifling bureaucratic deadhand and straightjacket that might result from a government monopoly of education such as is found in totalitarian countries. See DANIEL D. McGARRY, "INTERNATIONAL PANORAMA" IN EDUCATIONAL FREEDOM, ED. DANIEL D. McGARRY AND LEO WARD (1960) 55-64. Not only did private education provide the original model and inspiration for public education, but it has continued to *pioneer many important improvements* in education. Among relatively recent innovations pioneered by private education are kindergartens, vocational education, combined work and study programs, special education of the handicap-

ped, such as the blind, the deaf, and the less gifted, adult education, evening school, smaller classes, individual instruction, and many others, including the Montessori program and even Progressive Education. When many public schools went overboard with Progressive Education, private education in general was more conservative and continued to stress the basics. See CHAMBERLIN, *OUR INDEPENDENT SCHOOLS* (1944); W. BRICKMAN and SHANNON in *THE ROLE OF THE INDEPENDENT SCHOOL IN AMERICAN DEMOCRACY* (1956), 61-82 and 83-92; and BRICKMAN in *EDUCATIONAL FREEDOM,* ed. DANIEL D. McGARRY and LEO WARD, (Milwaukee, Bruce, 1966), 1-22; CREMIN, *THE TRANSFORMATION OF THE SCHOOL...* (1961); VANDERWALKER, *THE KINDERGARTEN...* (1908).

3) An important contribution of private education in a free, pluralistic democracy such as ours is the *educational alternatives* that it offers *and the freedom of choice* in education that it provides. The freedom of parental choice in education guaranteed by this Court in such cases as *Meyer* and *Pierce,* and asserted by the UNITED NATIONS UNIVERSAL DECLARATION OF HUMAN RIGHTS would be meaningless in the absence of alternative schools. But this situation already prevails in many parts of this country especially in communities apart from highly populated urban areas.

III. NULLIFICATION OF THE MINNESOTA STATUTE WOULD BE INCONSISTENT AND WOULD NEGATE PERSONAL RIGHTS; WHEREAS ALLOWING IT TO STAND WILL UPHOLD NEUTRAL AND BENEVOLENT GOVERNMENTAL ACCOMMODATION OF PERSONAL VALUES

A. Nullification Of The Minnesota Statute Would Be Unreasonable And Inconsistent.

It has been seen that the allowance of educational tax deductions for parents, including parents who send their children to schools that include religion in their curriculum, is both reasonable and consistent. Such deductions make allowance for reduced ability of parents to pay taxes due to required expenditures which provide a public benefit. They are also consistent with numerous other deductions allowed by state and federal income tax laws, including other deductions for educational expenses. It has also been noted that the benefit conferred on parents who send their children to schools that include religious instruction as well as secular subjects, is negative, and that such parents participate as members of a broad class. Meanwhile the benefit conferred on the schools they choose is secondary and indirect, as well as conditional upon the free choice of parents.

Opponents of the Minnesota statute object, however, that the Statute is unconstitutional because it ultimately helps church-related schools to some extent, and in doing so ultimately also helps to advance religion to some extent. But, as this Court has several times noted, an ultimate benefit to religion resulting from a statute is not in itself disqualifying. *Everson* v. *Board of Education,* 330 U.S. 1 (1947) at 17-18; *Zorach* v. *Clauson,* 343 U.S. 306 (1952) at 312-314, *Board of Education* v. *Allen,* 392 U.S. 236 (1968) at 242; *Walz* v. *Tax Commission,* 397 U.S. 664 (1970) at 671-672.

The alleged reason for nullification is some ultimate secondary advancement of religion in certain cases. But tax exemptions for religious organizations together with similar exemptions for church-related schools and their property, as well as personal income tax deductions for direct contributions to churches and church-related schools, that are provided by governments and allowed by the courts actually advance religion much more directly and more efficaciously than do tax deductions for the educational expenses of parents, some of whom send their children to church-related schools. In the first cases the whole benefit goes directly to the church and its religious mission or to

the school and its partly religious mission; whereas in the latter case any financial benefit is indirect, and accrues only after the deduction of the considerable expenses of mainly secular education, including teacher salaries and overhead costs (such as those for heating and maintenance). If one would accept the reasoning of opponents, state and federal allowance of deductions for contributions to charitable, religious, educational, fraternal, and scientifice organizations would logically have to be invalidated if it were found that, at a given time, churches and church-related institutions received the greater part of such contributions.

B. Invalidation Of The Statute Would Negate Parental And Personal Rights.

1. Invalidation Of The Statute Would Negate The Right Of Parents To Direct The Education Of Their Children

It has been seen that parents have a right to direct and control the education of their children, a right which has several times been affirmed by this Court. But this Court has also several times said that a state may not impose a penalty upon the exercise of a right guaranteed by the Constitution, unless such action is necessitated by a substantial and compelling state interest. *Shapiro* v. *Thompson,* 394 U.S. 618 (1969) at 631-633; *United States* v. *Jackson,* 390 U.S. 570 (1968) at 582-583; *Sherbert* v. *Verner,* 374 U.S. 398 (1963) at 404-407; *Speiser* v. *Randall,* 357 U.S. 513 (1958) at 525-526. No substantial and compelling state interest that would necessitate denial of this parental right has been shown to be present in the instant case. In fact, the contrary is seen to be true.

2. Invalidation Of The Statute Would Inhibit The Right Of Free Exercise Of Religion

Nullification of the Minnesota Statute on the grounds that some benefitted parents send their children to church-related

schools would obviously inhibit the free exercise of religion. One of the essential elements of the free exercise of religion is the ability to pass on one's religious beliefs and practices freely and effectively to one's children. As this Court has said in the *Schempp* case, "...the Free Exercise Clause...recognizes the value of religious training, teaching, and observance, and more particularly the right of every person to freely choose his own course with reference thereto..." *Abington School District* v. *Schempp,* 374 U.S. 203 (1963) at 222. If the Court were to disallow the deductions because they include among negatively benefitting taxpayers the parents of children who send their children to church-related schools, the Court would, in effect, be penalizing a right under the Constitution, which would be unconstitutional unless this was necessitated by a compelling and substantial state interest. For this would be contrary to the principle enunciated by this Court in the *Shapiro, Sherbert,* and *Speiser* cases, cited above.

If the proposition alleged by opponents in the instant case were accepted, it would follow that the tax deductions allowed for dependents by state and federal income tax codes should be disallowed if some parents were spending a considerable amount of their time, energy, and resources rearing their children as devout Christians, Jews, or Mohammedans.

3. Nullification Of The Minnesota Statute Would Inhibit The Freedoms Of Speech And The Press, Including Freedom Of Education, Protected By The First Amendment.

Among freedoms protected by our Constitution are freedoms of speech and the press, which are understood as including educational freedom. These freedoms are guaranteed by the First Amendment as extended to the states by the Fourteenth Amendment. *Cantwell* v. *Connecticut,* 310 U.S. 296 (1940) at 303; and *Griswold* v. *Connecticut,* 381 U.S. 479 (1965) at 400-402, 410, and 482-483. As this Court said in the *Griswold* case: "...the State may not, consistently with the spirit of the

First Amendment, contract the spectrum of available knowledge. The right of freedom of speech and the press includes not only the right to utter or to print, but the right to distribute, the right to receive, the right to read....and freedom of inquiry, freedom of thought, and freedom to teach ...." *Griswold* v. *Connecticut,* 381 U.S. 379 (1965) at 482-483. As this Court said in the *Keyishian* case: "Our nation is deeply committed to safeguarding academic freedom, which is of transcendent value.... That freedom is therefore a special concern of the First Amendment..." *Keyishian* v. *Board of Regents...,* 385 U.S. 589 (1967) at 603.

4. Nullification Of The Statute Would Withhold The Equal Protection Of The Laws Mandated By The Fourteenth Amendment.

Nullification of the Minnesota Statute because of its benefit to parents who send their children to church-related schools would deny such parents the equal protection and benefit of the law without sufficient reason and would thus be contrary to the Fourteenth Amendment. Such nullification would create an unjustified special classification which would exclude parents of such children from participating in a general and common benefit. Such a classification creating "an invidious discrimination" denying them equal protection of the laws, would "chill the assertion of constitutional rights by penalizing those who choose to exercise them..." to use words of this court in *Shapiro* v. *Thompson,* 394 U.S. 618 (1969) at 627 and 631. As this Court decided in *Shapiro,* imposition of a burden upon the exercise of a constitutional right is unconstitutional unless it is necessary in order to protect a compelling governmental interest. *Shapiro* v. *Thompson,* 394 U.S. 618 (1969) at 634.

C. Abstention From Invalidating The Statute Will Uphold Acceptable Governmental Accommodation, Neutrality, And Benevolence Toward Deeply Held Personal Values Of Citizens

This Court has several times stated that although the First Amendment requires neutrality towards personal values of citizens, including religion, the Amendment does not require hostility toward such values. This Court has also explained that the neutrality of government regarding special values including religion may be benevolent in that it may respect and accommodate the special values of citizens and facilitate their pursuit.

This Court has several times reiterated the constitutional requirement of governmental neutrality toward religion, irreligion and various religions. *Everson* v. *Board of Education,* 330 U.S. 1 (1947) at 16 and 18; *Zorach* v. *Clauson,* 343 U.S. 306 (1952) at 313-314; *McCollum* v. *Board of Education,* 333 U.S. 203 (1948) at 211-212; *Abington School District* v. *Schempp,* 374 U.S. 203 (1963), at 203 and 226; *Torcase* v. *Watkins,* 367 U.S. 488 (1961) at 495; *Board of Education* v. *Allen,* 392 U.S. 236 (1968) at 242-245.

This Court has also repeatedly insisted that neutrality toward religions does not mean hostility, and that not only is hostility not required, but it is actually forbidden. *Everson* v. *Board of Education,* 330 U.S. 1 (1947) at 16 and 18; *McCollum* v. *Board of Education,* 333 U.S. 203 (1948) at 211-212; *Zorach* v. *Clauson,* 343 U.S. 306 (1952) at 313-314.

This Court has sustained and even mandated governmental accommodation of deeply held personal values of citizens when there is no compelling and substantial state interest that necessitates the contrary. In the *Sherbert* case this Court upheld the right of a Sabbatarian to receive social security compensation despite the fact that she refused to work on Saturdays because of her religious beliefs. *Sherbert* v. *Verner,* 374 U.S. 398 (1963). In so doing, the Court explained: "This holding but reaffirms a principle that we announced a decade and a half ago, namely that 'no State may exclude Catholics, Mohammedans, Baptists, Jews, Methodists, Non-believers, Presbyterians, or the members of any other faith, *because of*

their faith, or lack of it, from receiving the benefits of public welfare legislation' " *Id.*, at 410. This Court has upheld the exemption from compulsory military service laws of conscientious objectors who claim that their religious beliefs forbid them to participate in the armed services. *Gillette* v. *U.S.*, 401 U.S. 437 (1971) at 450-453. It has done so even when they are not members of any formal religious group, and their "religion" does not include belief in God. *Torcaso* v. *Watkins,* 367 U.S. 488 (1961); *United States* v. *Seeger,* 380 U.S. 163 (1965) at 173-180. This sort of accommodation was referred to with approval by Justice Brennan in the *Schempp* case with reference to government provision of chaplains and religious services for prisoners and members of the armed services who otherwise might be deprived of religious services. In his concurring opinion Justice Brennan noted that "...hostility, not neutrality, would characterize the refusal to provide chaplains and places of worship for prisoners and soldiers cut off by the State from all civilian opportunities for public communion." *Abington School District* v. *Schempp,* 374 U.S. 203 (1963) at 299.

As this Court explained in the *Zorach* case, while the proper attitude of government toward religions is one of neutrality, it is also one of cooperation with citizens in pursuit of their spiritual needs and purposes. Justice Douglas, writing for the majority in *Zorach* said: "When the state encourages religious instruction or cooperates with religious authorities ... it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who do believe...But we find no constitutional requirement that makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence." *Zorach* v. *Clauson,* 343 U.S. 306 (1952) at 313-314.

In the *Walz* case this Court restated this reasoning and characterized the proper attitude of the state to religion as one of "benevolent neutrality." In this case, Chief Justice Burger, writing for the majority said: "The general principle deductible from the First Amendment and all that has been said by this Court is this: that we will not tolerate either governmentally established religion or governmental interference with religion. Short of those expressly proscribed governmental acts there is room for play in the joints productive of a benevolent neutrality..." *Walz* v. *Tax Commission*, 397 U.S. 664 (1970) at 669.

CONCLUSION

In extending allowable tax deductions to include deductions for educational expenditures by parents, the State of Minnesota has alleviated the heavy burden born by parents in at least a negative manner while observing guidelines intimated by this Court in *Committee For Public Education and Religious Liberty* v. *Nyquist,* 413 U.S. 756 (1973) at 789-794. The direct beneficiaries of the allowed tax deductions are parents who participate as members of a very broad class. This class is composed not only of parents of public school and parental school children, but also of all taxpayers enjoying similar deductions because of expenditures which reduce effective income or contribute to the public good. The State of Minnesota has meanwhile manifested the benevolent neutrality toward personal values praised by this Court. Its Statute, passed by the state legislature, approved by the governor, and declared constitutional by three federal courts, has an acquired as well as inherent assumption of constitutionality and should be allowed to stand, as it has for over twenty-six years.

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